Supreme Court, U. S.
FILED
MAY 1 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1979

No. 79-1273

WALTER RUMAN AND ALL OTHERS SIMILARLY SITUATED,

Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF REVENUE; COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF REVENUE, BUREAU OF STATE LOTTERIES; MILTON LOPUS, SECRETARY OF REVENUE OF THE COMMONWEALTH OF PENNSYLVANIA; AND LYNN R. NELSON, EXECUTIVE DIRECTOR, BUREAU OF STATE LOTTERIES,

Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDIX

ELISABETH S. SHUSTER
Deputy Attorney General
ALLEN C. WARSHAW,
Deputy Attorney General
Chief, Civil Litigation
EDWARD G. BIESTER, JR.
Attorney General
Attorneys for Respondents

Pa. Dept. of Justice
16th Fl., Strawberry Square
Harrisburg, PA 17120

Murrelle Printing Co., Box 100, Sayre, Pa. 18840—(717) 882-0401

TABLE OF CONTENTS

	PAGE
I. Additional Statutory Provisions and Regulations Involved	1
II. Counter-Statement of the Question Presented:	
1. Whether the Pennsylvania Bureau of State Lotteries is an integral part of the Commonwealth of Pennsylvania and as such is protected from suit by the Eleventh Amendment of the United States Constitution?	2
III. Counter-Statement of the Case:	
A. Statement of the Case	3
IV. Reasons for Denying the Writ:	
A. The lower Court's holding is neither novel nor erroneous and, therefore, should not be reviewed by this Court	7
V. Conclusion	10
APPENDIX:	
Pennsylvania State Lottery Law, 72 P.S. §3761-1 et seq.	1a
Title 45 Legal Notices	12a
Rules and Regulations	14a

TABLE OF CITATIONS

CASES:	
Cohens v. Virginia, 19 U.S. 264, 405 (1821)	7
Daye v. Pennsylvania, 483 F.2d 294 (3d Cir. 1973), cert. denied. 416 U.S. 946 (1974)	9

Edelman v. Jordan, 415 U.S. 651, 663 (1974) ... 7
Farr v. Chesney, 441 F. Supp. 127 (M.D. Pa. 1977) 7
Fitzpatrick v. Bitzer, 427 U.S. 445 (1976) 7
Ford Motor Co. v. Dept. of Treasury, 323 U.S. 459 (1945) 7
Hutto v. Finney, 437 U.S. 678 (1978) 10
Markham v. City of Newport News, 292 F.2d 711 (4th Cir. 1961) 9
Richins v. Industrial Construction, Inc., 502 F.2d 1051 (10th Cir. 1974) 9
Ruman v. Commonwealth of Pa., Dept. of Revenue (Petition, 6(a), (11a)) 8, 9
S. J. Groves & Sons Co. v. New Jersey Turnpike Authority, 268 F. Supp. 568 (D. N.J. 1967) 9
Scott v. Board of Supervisors, 336 F.2d 557 (5th Cir. 1964) 9
Skehan v. Board of Trustees of Bloomsburg State College, 538 F.2d 53, 62 (3d Cir. 1976) (en banc) cert. denied, 429 U.S. 979 (1976) 8
Transamerica Insurance Co. v. Judie, Inc., 30 Pa. Commonwealth Ct. 259, 373 A.2d 478 (1977) 8, 9
Unified School District No. 480 v. Epperson, 551 F.2d 254 (9th Cir. 1977) 8

STATUTORY PROVISIONS:

Act of May 20, 1937, P.L. 728, No. 193 as amended, 72 P.S. 4561-1 et seq. 10
45 Pa. C.S.A. §904 1
61 Pa. Code Ch. 23 §4(a) 6
72 P.S. §201-2(4) (vii, ix and xvii) 3

Pennsylvania State Lottery Law:
72 P.S. §3761-1, et seq. 1
72 P.S. §3761-2 5
72 P.S. §3761-4 5
72 P.S. §3761-6 5
72 P.S. §3761-12(a) 5
Pennsylvania Unfair Trade Practice & Consumer Protection Law, Act of 12/17/69, P.L. 1224, §§2(4) (vii), (ix) and (xvii) 3
42 U.S.C. §1983 ..... 3, 4

PUBLICATIONS:

7 Pa. Bulletin 254, (1/29/77) 1
7 Pa. Bulletin 255, (1/29/77) 1, 6

I. ADDITIONAL STATUTORY PROVISIONS AND REGULATIONS INVOLVED

In addition to the Eleventh Amendment to the United States Constitution, already set forth in the Petition for Certiorari (Petition, p. 4), this case also involves the Pennsylvania State Lottery Law, 72 P.S. §3761-1, *et seq.*, regulations promulgated pursuant to the State Lottery Law at 7 Pa. Bulletin 254, 255 (January 29, 1977) and section 1 of the Pennsylvania Consolidated Statutes annotated, Legal Notices, 904 of Title 45, 45 Pa. C.S.A. §904. The provisions of the State Lottery Law are set forth verbatim in the Appendix hereto at 1a-11a. The pertinent provisions of the regulations are set forth verbatim in the Appendix hereto at 14a-19a. 45 Pa. C.S.A. §904, is set forth verbatim in the Appendix hereto at 12a-13a.

II. COUNTER-STATEMENT OF THE QUESTION PRESENTED

1. Whether the Pennsylvania Bureau of State Lotteries is an integral part of the Commonwealth of Pennsylvania and as such is protected from suit by the Eleventh Amendment of the United States Constitution?

III. COUNTER-STATEMENT OF THE CASE

A. Statement of the Case

1. *Procedural History*

Petitioner Walter Ruman, a citizen of Ohio, filed a complaint in the Middle District of Pennsylvania on September 1, 1977 against the Pennsylvania Department of Revenue, the Bureau of State Lotteries of the Pennsylvania Department of Revenue, Milton Lopus, the Pennsylvania Secretary of Revenue and Lynn R. Nelson, Executive Director of the Bureau of State Lotteries of the Pennsylvania Department of Revenue, alleging that his winning ticket in the Big Fifty Bonus Lottery No. 3 entitled him to a Winnebago Elandan II motor home worth approximately $29,000 and that, instead, defendants offered him a Winnebago Brave motor home with an approximate value of $13,000. The complaint alleged deprivation of a property interest without due process in violation of the Fourteenth Amendment to the United States Constitution, an assumpsit action based upon diversity of citizenship, violation of 42 U.S.C. §1983 and a violation of the Pennsylvania Unfair Trade Practice and Consumer Protection Law, Act of December 17, 1969, P.L. 1224, §§2(4)(vii), (ix) and (xvii), 72 P.S. §201-2(4)(vii, ix and xvii). The complaint was amended on October 27, 1977 to include class action allegations. Thereafter, defendants filed a motion to dismiss which was granted by the District Court on January 8, 1979.

In dismissing the complaint, Judge Herman found that the Bureau of State Lottery is "an integral part of the Commonwealth and that defendants are therefore immune from suit under Eleventh Amendment immunity" (Petition, 6a-8a), that the assumpsit action based upon diversity of citizenship was barred by the Eleventh Amendment (Petition, 8a) and that the individual defendants were immune from suit based on 42 U.S.C. §1983 under Eleventh Amendment immunity (Petition, 9a-10a). He also held that plaintiff did not adequately allege a property interest of which he was deprived in violation of the Fourteenth Amendment to the United States Constitution (Petition, 12a) and that an alleged violation of the Pennsylvania Unfair Trade Practice and Consumer Protection Act does not give rise to an action under 42 U.S.C. §1983 (Petition, 14a).

Ruman appealed on February 6, 1979 and after the submission of briefs by both sides, but without oral argument, the Third Circuit affirmed the decision without rendering an opinion. Petitioner filed his petition for certiorari on February 19, 1980.

By his petition, Ruman challenges only those holdings of the lower court which were based on its application of the Eleventh Amendment. He does not challenge the lower court's dismissal of his federal claims for failure to state a cause of action.[1]

Pursuant to this Court's request, defendants (hereinafter "respondents") now file this brief in opposition to the granting of Ruman's petition for certiorari.

2. *The Pennsylvania Bureau of State Lotteries*

In 1971 the Pennsylvania Legislature passed the State Lottery Law. The purposes of the lottery are for

> . . . providing property tax relief for the elderly for taxes paid in 1971 and thereafter and for providing certain free local transit to persons sixty-five years of age or older. It is further intended to provide a means through which to curb illegal gambling operations in Pennsylvania.

72 P.S. §3761-2. The Division of the State Lottery was "created within the Department of Revenue," 72 P.S. §3761-4, and it was further provided that the Secretary of Revenue "shall have the power and it shall be his duty to operate and administer the lottery". 72 P.S. §3761-6. Petitioner has never alleged that the Department of Revenue is not an alter ego of the Commonwealth of Pennsylvania and therefore immune from suit under the Eleventh Amendment.

The State Lottery Law directs that the monies received from the sale of lottery tickets should be kept in a fund separate from the Commonwealth's General Fund. However, monies from the General Fund must be appropriated to meet the obligations of the Lottery Fund if the money in the Lottery Fund is insufficient to meet them. 72 P.S. §3761-12(a). Therefore, if there are insufficient funds in the Lottery Funds to satisfy a judgment in favor of Petitioner, the money must come out of the General Fund. This is an especially real prob-

---

[1] Nor, apparently does he challenge the dismissal of the individual defendants, as he concedes that he seeks no relief from them, but rather only payments from the state lottery funds. (Petition at 16.)

ability when it is remembered that Petitioner is attempting to bring a class action and has alleged the violation of a state statute which provides for treble damages.

3. *Petitioner's Allegations*

Petitioner bought a $.50 lottery ticket in the Lottery's Big Fifty Bonus Game No. 3 and had the good fortune to win the first prize—a Winnebago. The Winnebago which he won was described in the Bureau of State Lottery's published regulations, 61 Pa. Code Ch. 23 §4(a), 7 Pa. B. 255 (January 29, 1977), as "a 1977 Winnebago Motor Home plus $2,734.55 cash, for a total prize of $13,671.25." A notice printed on the back of petitioner's lottery ticket read, in pertinent part, that "[d]etermination of winners is subject to the rules and regulations of the Pennsylvania Bureau of State Lotteries, Department of Revenue."

Petitioner, however, alleges that the prize that he was entitled to was a Winnebago Elandan II motor home valued at approximately $29,000. Petitioner bases his claim on that part of the notice on the back of his lottery ticket which states, in pertinent part, "win the prize shown on the front of the ticket." Petitioner alleges that the artist's sketch on the front of his ticket was of a Winnebago Elandan II and not the Winnebago Brave that was described in the regulations and offered to him as his prize.

IV. REASONS FOR DENYING THE WRIT

A. The Lower Court's Holding Is Neither Novel Nor Erroneous and, Therefore, Should Not Be Reviewed by This Court

As early as 1821 this Court held that the purpose of the Eleventh Amendment is to afford protection to the states from suits in federal court by citizens seeking to impose a liability which must be paid out of governmental funds. *Cohens v. Virginia,* 19 U.S. 264, 405 (1821). Over a century-and-a-half later, the Court has noted that:

> It is also well established that even though a State is not named a party to the action, the suit may nonetheless be barred by the Eleventh Amendment. In *Ford Motor Co. v. Department of Treasury,* 323 U.S. 459 (1945), the Court said:
>
> '[W]hen the action is in essence one for the recovery of money from the state, the state is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants.'

Edelman v. Jordan, 415 U.S. 651, 663 (1974). *See Fitzpatrick v. Bitzer,* 427 U.S. 445 (1976); *Farr v. Chesney,* 441 F. Supp. 127 (M.D. Pa. 1977).

A state is entitled to invoke Eleventh Amendment immunity not only when state officials are the nominal defendants, but also when state agencies are involved, if they meet the necessary conditions. "The powers and legal form, and the functional autonomy and extent of

independent financing of the entity in question, as defined by applicable state law, are crucial to the Eleventh Amendment's application. *Unified School District No. 480 v. Epperson,* 551 F.2d 254 (9th Cir. 1977)." *Ruman v. Commonwealth of Pennsylvania, Department of Revenue,* (Petition, 6a).

While the Eleventh Amendment question is one of federal law, state court decisions on the nature of the entity created by the legislature are entitled to the utmost respect. *Skehan v. Board of Trustees of Bloomsburg State College,* 538 F.2d 53, 62 (3d Cir. 1976) (*en banc*), *cert. denied,* 429 U.S. 979 (1976). In *Transamerica Insurance Co. v. Judie, Inc.,* 30 Pa. Commonwealth Ct. 259, 261, 373 A.2d 478, 479 (1977), the Commonwealth Court of Pennsylvania decided the nature of the Bureau of State Lottery; it is "an integral part of the Commonwealth" and is protected from suit by sovereign immunity.

Commonwealth Court based its decision on *Transamerica* on several sections of the State Lottery Law (Law).

> Section 4 of the Law specifically states that the Bureau [of State Lotteries] is created 'within the *Department of Revenue.*' (Emphasis added.) Section 6 of the Law places upon the *Secretary of Revenue* the duty of administering the lottery as well as the responsibility for promulgating rules and regulations governing the operation of the lottery. Licensing of agents is also performed by the Secretary of Revenue.
>
> * * *
>
> With respect to the Bureau's finances, Section 12(a) of the Law provides that in the event sufficient funds are not available from lottery receipts to meet the Bureau's statutory obligations, additional funds to fulfill those obligations shall be appropriated from the General Fund.

Transamerica, at 262-263 (footnotes omitted) (all emphasis added by the Court). Thus, the Bureau of State Lotteries is clearly "an integral part of the Commonwealth" and as such is entitled to Eleventh Amendment immunity from suit.

"[A]lthough a state may waive its Eleventh Amendment immunity, the conclusion by a court that there has been a waiver will not be lightly inferred and when a waiver does take place it must be clear and unequivocal." *Ruman,* (Petition, 11a), citing *Daye v. Pennsylvania,* 483 F.2d 294 (3d Cir. 1973), *cert. denied* 416 U.S. 946 (1974). The fact the Pennsylvania General Assembly established a Board of Arbitration of Claims having original jurisdiction to hear claims arising out of contracts entered into by the Commonwealth[2] does not constitute a waiver of the Commonwealth's, and the Bureau's, Eleventh Amendment immunity. "The law in at least three circuits holds that a state's consent to be sued in its own courts is not necessarily a waiver of its Eleventh Amendment immunity. *See Richins v. Industrial Construction, Inc.,* 502 F.2d 1051 (10th Cir. 1974); *Scott v. Board of Supervisors,* 336 F.2d 557 (5th Cir. 1964); *Markham v. City of Newport News,* 292 F.2d 711 (4th Cir. 1961); *see also, S. J. Groves & Sons Co. v. New Jersey Turnpike Authority,* 268 F. Supp. 568 (D. N.J. 1967)." *Ruman,* (Petition, 11a).[3] The Commonwealth of Pennsylvania, the Department of Revenue and the Bureau of State Lotteries do not consent to suit.

Based on the above, it is clear that the district court's analysis in this case was neither novel nor erroneous. This Court should, therefore, refuse to review this case.

V. CONCLUSION

For the foregoing reasons, respondents respectfully request that this Honorable Court deny the Petition for a Writ of Certiorari to review the judgment in the Court of Appeals for the Third Circuit in this case.

ELISABETH S. SHUSTER
Deputy Attorney General
ALLEN C. WARSHAW
Deputy Attorney General
Chief, Civil Litigation
EDWARD G. BIESTER, JR.
Attorney General
Attorneys for Respondents

[2] Act of May 20, 1937, P.L. 728, No. 193, *as amended*, 72 P.S. §4561-1, *et seq.*

[3] It should again be noted that Petitioner does not seek review of the lower court's holding that he has failed to state any federal cause of action. Thus, he cannot assert a Congressional waiver of Pennsylvania's immunity. See *Hutto v. Finney*, 437 U.S. 678 (1978).

APPENDIX

STATE LOTTERY [NEW]
[72 P.S. §3761-1]

§3761—1. Short title

This act shall be known and may be cited as the "State Lottery Law."

Section 17 of the act of 1971 provided that this act shall take effect immediately.

Title of Act:

An Act providing for a State Lottery and administration thereof; authorizing the creation of a State Lottery Commission; prescribing its powers and duties; disposition of funds; violations and penalties therefor; exemption of prizes from State and local taxation and making an appropriation. 1971, Aug. 26, P.L. 351, No. 91.

§3761—2. Statement of purpose

This act is enacted to establish a lottery to be operated by the State, the net proceeds of which are to be used after June 30, 1972 for the purposes of providing property tax relief for the elderly for taxes paid in 1971 and thereafter and for providing certain free local transit to persons sixty-five years of age or older. It is further intended to provide a means through which to curb illegal gambling operations in Pennsylvania.

§3761—3. Definitions

As used in this act:

(1) "Commission" shall mean the State Lottery Commission established by this act.

(2) "Division" shall mean the Division of the State Lottery created by this act.

(3) "Lottery" or "State lottery" shall mean the lottery established and operated pursuant to this act.

(4) "Director" shall mean the Director of the Division of the State Lottery.

(5) "Secretary" shall mean the Secretary of Revenue.

§3761—4. State lottery commission; chairman

There is hereby created within the Department of Revenue a Division of the State Lottery which shall include a State Lottery Commission.

The commission shall consist of a chairman and four members, all of whom shall be citizens and residents of the State. No more than three of the five members shall belong to the same political party. The chairman shall be appointed by the Governor, by and with the advice and consent of two-thirds of all the members of the Senate, and shall hold office at the pleasure of the Governor. The members of the commission shall be appointed by the Governor, by and with the advice and consent of two-thirds of all the members of the Senate. The members of the commission shall hold office for four years. No member, upon the expiration of his term, shall continue to hold office until his successor is appointed and qualified. Of the members first taking office, two shall be appointed for a term of one year and two for a term of two years. The members of the commission shall receive actual and necessary expenses incurred by them in the performance of their duties, together with a per diem allowance to be paid by the Governor's Office for each

day spent in the performance of their duties. Vacancies in the commission occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as original appointments. Any member of the commission, other than the chairman, may, after notice and opportunity to be heard, be removed by the Governor for neglect of duty, misfeasance, malfeasance or nonfeasance in office.

Three of the members of the commission shall constitute a quorum to do business.

The director shall act as secretary and executive officer of the commission.

§3761—5. Powers and duties of commission

The commission shall advise and make recommendations to the Secretary of Revenue regarding the functions and operations of the State lottery.

§3761—6. Powers and duties of the Secretary of Revenue

(a) In addition to the powers and duties provided by law and "The Administrative Code of 1929," the Secretary of Revenue shall have the power and it shall be his duty to operate and administer the lottery, and to promulgate rules and regulations governing the establishment and operation thereof, including but not limited to:

(1) The type of lottery to be conducted.

(2) The price, or prices, of tickets or shares in the lottery.

(3) The numbers and sizes of the prizes on the winning tickets or shares.

(4) The manner of selecting the winning tickets or shares.

(5) The manner of payment of prizes to the holders of winning tickets or shares.

(6) The frequency of the drawings or selections of winning tickets or shares, without limitation.

(7) Without limit as to number, the type or types of locations at which tickets or shares may be sold.

(8) The method to be used in selling tickets or shares.

(9) The licensing of agents to sell tickets or shares provided that no person under the age of twenty-one shall be licensed as an agent.

(10) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public.

(11) The apportionment of the total revenues accruing from the sale of lottery tickets or shares and from all other sources among (i) the payment of prizes to the holders of winning tickets or shares; (ii) the payment of costs incurred in the operation and administration of the lottery, including the expenses of the division and the costs resulting from any contract or contracts entered into for promotional, advertising or operational services or for the purchase or lease of lottery equipment and materials; (iii) for the repayment of the moneys appropriated to the State Lottery Fund pursuant to section 16 of this act; and (iv) for property tax relief and free local transit for the elderly as provided in section 12 of this act: Provided, however, That no less than thirty per cent of the total revenues accruing from the sale of lottery tickets or shares shall be dedicated to subclause (iv) above.

(12) Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

(b) To report monthly to the Governor and the Legislature the total lottery revenues; prize disbursements and other expenses for the preceding month, and to make an annual report, which shall include a full and complete statement of lottery revenues, prize disbursements and other expenses, to the Governor and the Legislature, and including such recommendations for changes in this act as the secretary deems necessary or desirable.

§3761—7. Lottery sales agents; qualifications; prohibitions

(a) No license as an agent to sell lottery tickets or shares shall be issued to any person to engage in business exclusively as a lottery sales agent. Before issuing such license the secretary shall consider such factors as:

(1) The financial responsibility and security of the person and his business or activity;

(2) The accessibility of his place of business or activity to the public;

(3) The sufficiency of existing licenses to serve the public convenience; and

(4) The volume of expected sales.

For the purpose of this section, the term "person" shall be construed to mean and include an individual, association, corporation, club, trust, estate, society, company, joint-stock company, receiver, trustee, assignee, referee, or

any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" shall also be construed to mean and include all departments, commissions, agencies and instrumentalities of the State, including counties and municipalities and agencies and instrumentalities thereof.

(b) If the secretary shall find that the experience, character and general fitness of the applicant are such that the participation of such person as a lottery sales agent will be consistent with the public interest, convenience and necessity, it may thereupon grant a license.

Without limiting the generality of the foregoing, the secretary may refuse to issue a license pursuant to this section, or may suspend or revoke a license so issued if it shall find that the applicant or licensee:

(1) Has been convicted of a crime involving moral turpitude.

(2) Has engaged in bookmaking or other form of illegal gambling.

(3) Has been found guilty of any fraud or misrepresentation in any connection.

(4) Has violated any rule, regulation or order of the secretary.

(c) The secretary may refuse to grant a license or may suspend or revoke a license issued pursuant to this section to a corporation, if it shall determine that:

(1) Any officer, director, member or stockholder of such corporation applying for a license or of any corporation which owns stock in or shares in the profits, or participates in the management of the affairs of such applicant: (i) has been convicted of a crime involving moral turpitude, (ii) has engaged in bookmaking or other forms of illegal gambling, (iii) has been found guilty of any fraud or misrepresentation in any connection, or (iv) has violated any rule, regulation or order of the secretary.

(2) The experience, character, or general fitness of any officer, director, or stockholder of any of the aforesaid corporations is such that the participation of such person as a lottery sales agent would be inconsistent with the public interest, convenience or necessity, but if the secretary determines that the interest of any stockholder referred to in this clause or in clause (1) of this subsection is sufficient, in the opinion of the secretary, to affect adversely the conduct of a lottery sales agency by such corporation in accordance with the provisions of this act, the secretary may disregard such interest in determining whether or not to grant a license to such corporation.

(3) The applicant is not the owner or the lessee of the business at which it will conduct a lottery sales agency pursuant to the license applied for, or that any person, firm, association, or corporation other than the applicant shares, or will share, in the profits of the applicant, other than by dividends as a stockholder, or participates, or will participate, in the management of the affairs of the applicant.

(d) Pending final determination of any question under this section, the secretary may issue a temporary license upon such terms and conditions as it may deem necessary, desirable or proper to effectuate the provisions of this act.

§3761—8. Assignability of prizes drawn

No right of any person to a prize drawn shall be assignable, except that payment of any prize drawn may

be paid to the estate of a deceased prize winner, and, except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled. The secretary shall be discharged of all further liability upon payment of a prize pursuant to this section.

§3761—9. Sales of tickets in excess of regulated price; sales by nonlicensed persons; penalties

(a) No person shall sell a ticket or share at a price greater than that fixed by rule or regulation of the commission.

(b) No person other than a licensed lottery sales agent shall sell lottery tickets or shares, except that nothing in this section shall be construed to prevent any person from giving lottery tickets or shares to another as a gift.

Any person convicted of violating this section shall be guilty of a misdemeanor and upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars ($500).

§3761—10. Sales to certain persons prohibited; penalty

No ticket or share shall be sold to any person under the age of eighteen years. For the purpose of making a gift, a person eighteen years of age or older may purchase a ticket or share for the benefit of a person less than that age.

Any agent or employe of any agent who knowingly sells a lottery ticket or share to any person under the age of eighteen years shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars ($500).

No ticket or share shall be sold to and no prize shall be awarded to any officer or employee of the State Lottery Commission or the division of the State Lottery in the Department of Revenue or any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any of the foregoing persons.

§3761—11. Other laws inapplicable

No other law providing any penalty or disability for the sale of lottery tickets or shares or any acts done in connection with a lottery shall apply to the sale of tickets or shares or acts performed pursuant to this act.

§3761—12. Disposition of funds from sale of tickets or shares

(a) All moneys received from the operation of the State lottery shall be deposited in a State Lottery Fund which is hereby created. Such moneys shall be used to the extent necessary for the payment of lottery prizes but the amount so used shall not be less than forty per cent of the amount of which tickets or shares have been sold. All payments of lottery prizes and for expenses of operation of the lottery shall be made as provided by law. All moneys remaining after payment of prizes and operating expenses shall be transferred to the General Fund through June 30, 1972, after which date they shall remain in the State Lottery Fund and shall be allocated for the purpose of providing property tax relief for the elderly for taxes paid in 1971 and thereafter pursuant to the provisions of the act of March 11, 1971 (P.L. 104), known as the "Senior Citizens Property Tax Assistance Act," and for the purpose of providing local transit for the elderly pur-

suant to the act of January 22, 1968 (P.L. 42), known as the "Pennsylvania Urban Mass Transportation Assistance Law of 1967." In the event sufficient funds are not available from the lottery receipts to meet the requirements of the act of March 11, 1971 (P.L. 104), known as the "Senior Citizens Property Tax Assistance Act," or for providing local transit for the elderly under the act of January 22, 1968 (P.L. 42), known as the "Pennsylvania Urban Mass Transportation Assistance Law of 1967," additional funds to fulfill these obligations, shall be appropriated from the General Fund for this purpose.

(b) The moneys in said State Lottery Fund shall be appropriated only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares;

(2) For the expenses of the division in its operation of the lottery;

(3) For property tax relief and free local transit for the elderly as provided under section 12 of this act; and

(4) For transfer to the General Fund through June 30, 1972, and for the repayment to the General Fund of the amount appropriated to the fund pursuant to section 16 of this act.

§3761—13. Exemption of lottery prizes from state and local taxation

No State or local taxes of any kind whatsoever shall be imposed upon the proceeds from a prize awarded by the State lottery.

§3761—14. Unclaimed prize money

Unclaimed prize money on a winning lottery ticket or share shall be retained by the secretary for payment to the person entitled thereto for one year after the drawing in which the prize was won. If no claim is made within such period, the prize money shall be paid into the State Lottery Fund and used for purposes as otherwise herein provided.

§3761—15. Bank deposits and control of lottery transactions

The secretary may, in his discretion, require any or all lottery sales agents to deposit to the credit of the State Lottery Fund in banks, designated by the State Treasurer, all moneys received by such agents from the sale of lottery tickets or shares, less the amount, if any, retained as compensation for the sale of the tickets or shares, and to file with the secretary or his designated agents reports of their receipts and transactions in the sale of lottery tickets in such form and containing such information as he may require. The secretary may make such arrangements for any person, including a bank to perform such functions, activities or services in connection with the operation of the lottery as he may deem advisable pursuant to this act and the rules and regulations of the department, and such functions, activities or services shall constitute lawful functions, activities and services of such person.

TITLE 45 LEGAL NOTICES

45 Pa. C.S.A. EFFECTIVENESS OF DOCUMENTS

* * * * * * * *

§903. Effective date of documents

(a) General rule.—No document, except a document which is excluded from the operation of this subsection by subsection (b), which is required to be published under this part, shall be valid as against any person who has not had actual knowledge thereof until such publication has been effected. Publication shall be deemed to have been effected upon the deposit of the bulletin or the permanent supplement to the code containing such document in the United States mail for distribution. The issue date of the bulletin and of the permanent supplement to the code shall be the day of such deposit, and, in the case of the bulletin, such date shall be printed prominently upon the first page of each issue thereof.

(b) Certain judicial documents.—Judicial documents (including general rules) which are not adopted pursuant to statutory authority shall be effective as provided by general rule. General rules and other judicial documents which are adopted pursuant to statutory authority shall be fully subject to subsection (a).

§904. Constructive notice

Unless otherwise specifically provided by statute other than a provision of this title, the publication under this part of any document required or authorized by this part to be so published shall, except in cases where notice

by publication is insufficient in law, be sufficient to give notice of the contents of such document to any person subject thereto or affected thereby.

PENNSYLVANIA BULLETIN, VOL. 7, NO. 5,
JANUARY 29, 1977

254 Rules and Regulations

TITLE 61—REVENUE

DEPARTMENT OF REVENUE
BUREAU OF STATE LOTTERIES
Big Fifty Bonus Game No. 3

January 17, 1977

The Department of Revenue, Bureau of State Lotteries, by this order, adopts amendments to Chapter 23 (relating to reserved ticket plan for Bonus Game No. 3) and subsection (p) of Chapter 28 (relating to the Big Fifty Game Drawing, Bonus Game No. 3).

Notice of proposed rulemaking was published in 6 Pa. B. 3165, December 25, 1976.

No comments were received from the public in response to the rulemaking notice and the regulations are adopted as proposed, except for the following two amendments:

(1) Chapter 23 (reserved ticket plan) is further amended by changing the wording in the first sentence of clause (2) (relating to prize structure and claims) from "if the number drawn is a winning number" to "if the winning number drawn matches the number on the bonus stub".

(2) Clause (4) (relating to determination of prize winners) of Chapter 28, section (p) (relating to Big Fifty Bonus Game No. 3), is deleted and a new clause (4) substituted in its place, to read as set forth in Annex A to this order.

Notice of proposed rulemaking as to the modifications of the proposed regulations is omitted pursuant to 1Pa. Code §7.2, as they do not enlarge the original purpose of the regulations.

The regulations of the Bureau of State Lotteries hereby adopted are adopted pursuant to the authority contained in §6 of the State Lottery Law of August 26, 1971 (No. 91).

The Bureau of State Lotteries, Department of Revenue, finds:

(1) That public notice of intention to adopt the administrative regulations adopted by this order has been duly given pursuant to §§201 and 202 of the CDL (45 P.S. §§1201 and 1202) and the regulations thereunder, 1 Pa. Code §§7.1 and 7.2.

(2) That the adoption of the rules and regulations of the Bureau of State Lotteries, Department of Revenue, in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

The Bureau of State Lotteries, Department of Revenue, acting pursuant to the authorizing statute, orders:

(A) The rules and regulations of the Bureau of State Lotteries are amended by adding a new subsection (1) to Chapter 23 (relating to reserved ticket plan, Bonus Game No. 3) and adding Subsection (p) to Chapter 28 (relating to the, Big Fifty Bonus Game No. 3) to read as set forth in Annex A to this order.

(B) The Secretary of Revenue shall submit this order and Annex A hereto to the Department of Justice for approval as to legality as required by law.

(C) The Secretary of Revenue shall duly certify this order and Annex A hereto and deposit the same with the Legislative Reference Bureau as required by law.

(D) This order shall take effect upon publication.

By the Bureau of State Lotteries,
Department of Revenue
Milt Lopus,
Secretary of Revenue

Annex A

BIG FIFTY BONUS GAME NO. 3

Chapter 23. Reserved Ticket Plan.

(1) *Bonus Game No. 3*

(1) *Bonus Numbers*

Reserved Ticket Plan holders, whose current subscription is effective for the newly created Bonus Game No. 3 (Recreational Vehicles), shall use the four 6-digit Bonus Game numbers printed on their reserved ticket.

(a) The two 6-digit Bonus numbers appearing in the upper portion of the Bonus Game Ticket shall be used in determining the winner of the 1977 Winnebago Motor Home.

(b) The two 6-digit Bonus numbers appearing in the lower portion of the Bonus Game Ticket shall be used in determining the winner of the 1977 Coachman Motor Home.

(c) Reserved Ticket Plan holders' bonus numbers specified herein, shall automatically become eligible for Bonus Game No. 3 for its duration but no special notification shall be forwarded to the plan holders.

(2) *Prize Structure and Claims*

The Reserved Ticket Plan enters the holder in each weekly Big Fifty Bonus Game No. 3 drawing, for the weeks so subscribed and, therefore, if the winning number drawn matches the number on the bonus stub, the holder shall be eligible to the applicable prize described herein except that, the prize shall automatically be awarded without the necessity of filing a claim at established claim centers.

Subsection (p) of Chapter 28, the Big Fifty Game Drawing, heretofore reserved for Big Fifty Bonus Game No. 3, is hereby added to read as follows:

Chapter 28. Big Fifty Game Drawing.

(p) *Big Fifty Bonus Game No. 3*

(1) *Ticket Stub*

Commencing with the Big Fifty Game drawing on January 26, 1977, there shall appear to the right of the ticket a perforated right-hand stub identifying Bonus Game No. 3 (Recreational Vehicles) containing four 6-digit numbers.

(2) *Frequency*

The Bonus Game drawing shall be held in conjunction with the Big Fifty Game drawing.

(3) *Manner of Conducting Drawing*

The objective of the drawing shall be to select one 6-digit number at random using mechanical drawing equipment in order to determine the winners.

(4) *Determination of Prize Winners*

(a) Owners of tickets with the 6-digit number appearing on the stub under the caption "Match either number below—win a Winnebago" matching the 6-digit number drawn shall be awarded a 1977 Winnebago Motor Home plus $2,734.25 cash, for a total prize of $13,671.25.

(b) Owners of tickets with the 6-digit number appearing on the stub under the caption "Match either number below—win a Coachman" matching the 6-digit number drawn shall be awarded a 1977 Coachman Motor Home plus $2,731.50 cash, for a total prize of $13,657.50.

(c) Winners of (a) or (b) above shall receive the motor home described therein and the Bureau shall deduct 20% of the total prize value for Federal withholding tax purposes, as required by Tax Reform Act of 1976."

(5) *Agent Incentive Awards*

(a) The following bonuses shall be awarded to the agents selling winning bonus tickets for the following prizes in the Big Fifty Bonus Game weekly drawings:

(i) Bonus to agent selling the Winnebago ticket $100.00

(ii) Bonus to agent selling the Coachman ticket $100.00

(6) *Procedure for Claiming and Payment of Prizes*

(a) All prizes must be claimed at Claim Validation Centers (State Liquor Stores) under procedures heretofore established.

(b) The payment of prizes to persons under 18 years of age and to those persons who may die before receiving any or all of a particular prize shall be paid according to procedures established in Chapter 14 (f) and 15 (g) of these Regulations.

(c) The State shall be discharged of any and all liability after the payment of prizes as provided in Chapter 15 (f) of these Regulations.

(7) *Duration*

The Big Fifty Bonus Game No. 3 shall be continued by the Director at his discretion until such time as it is replaced by Bonus Game No. 4.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 1980, three copies of the Brief of Respondents in Opposition to Petition for Writ of Certiorari, were mailed, postage prepaid, to Neil J. Rovner, Esquire, Counsel for Petitioner, at 4503 North Front Street, Harrisburg, Pennsylvania 17110. It further certify that all parties required to be served have been served.

Elisabeth S. Shuster
Deputy Attorney General
Pennsylvania Dept. of Justice
16th Floor Strawberry Sq.
Harrisburg, PA 17120
Counsel for Respondents